IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5316 OF 1996

Shri Kisan Ramchandra Talekar
r/o. at Kenawade, Post.:Gorambe
Tal.: Kagal, Dist.: Kolhapur ... Petitioner

V/s.

1. The General Manager
Maharashtra State Road Transport
Corporation

2. Internal Insurance Fund
Maharashtra State Road Transport
Corporation,
both through Divisional Controller
M.S.R.T. Corporation, Kolhapur
Division, Dist.: Kolhapur ... Respondents

Mr.D.S. Sawant for Petitioner
Mr.G.S. Hegde for Respondent No.1

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 16, 2004**

ORAL JUDGMENT:

. This petition arises out of the order of the Commissioner for Workmen's Compensation at Kolhapur dated 26.6.1996. The Commissioner for Workmen's Compensation has allowed the claim filed by the petitioner, however, penalty on the amount of compensation awarded has been refused on the ground that there was a delay in filing the application. Under section 4-A of the Workmen's Compensation Act, the Commissioner is expected to award interest on the

compensation as well as penalty if a case has been made out that the employer had refused the compensation as payable under the Act without reason.

2. The facts in the present case are not disputed. The Petitioner was a driver employed with the Maharashtra State Transport Corporation, Respondent No.1 herein. While on duty on 18.3.1991, he met with an accident which caused serious injuries to his right leg and other injuries all over his body. The workman was admitted into hospital and treated for over one and a half years as an indoor and outdoor patient. On 20.6.1992, the services of the Petitioner were terminated. Despite several representations made by the Petitioner for compensation, the State Transport Corporation did not care to make any payment by way of compensation to the Petitioner. A claim was, therefore, filed by the Petitioner before the Commissioner for Workmen’s Compensation at Kolhapur. This claim was filed about three months after the expiry of the period of limitation. After the pleadings were complete, evidence was led by the Petitioner workman. No oral evidence was adduced by the State Transport Corporation. The Commissioner for Workmen’s Compensation after examining the pleadings and evidence before it, came to the conclusion that the claim of the Petitioner deserved to be allowed and therefore, granted Rs.84,720/- as

compensation together with interest @6% per annum. The Commissioner held that the accident had arisen in the course of and out of employment. However, as regards penalty the Commissioner came to the conclusion that the claim not having been filed within one month of the accident, there was no need to award penalty. It is this decision of the Commissioner which has been impugned in the present petition.

3. Section 4-A reads thus:

> 4-A. Compensation to be paid when due and penalty for default. - (1) Compensation under Section 4 shall be paid as soon as it falls due. (2) In cases where the employer does not accept the liability for compensation to the extent claimed, he shall be bound to make provisional payment based on the extent of liability which he accepts, and, such payment shall be deposited with the Commissioner or made to the workman, as the case may be, without prejudice to the right of the workman to make any further claim. (3) Where any employer is in default in paying the compensation due under this Act within one month from the date it fell due, the Commissioner shall -
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> (a) direct that the employer shall, in addition to the amount of the arrears, pay simple interest thereon at the rate of twelve per cent per annum or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government, by notification in the Official Gazette, on the amount due; and
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> (b) if, in his opinion, there is no justification of the delay, direct that the employer shall, in addition to the amount of the arrears and interest thereon, pay a further sum not exceeding fifty per cent of such amount by way of penalty:

> Provided that an order for the payment of penalty shall not be passed under clause (b) without giving a reasonable opportunity to the employer to show cause why it should not be passed.
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> Explanation.- For the purposes of this sub-section, "scheduled bank" means a bank for the time being included in the Second Schedule to the Reserve Bank of India Act, 1934 (2 of 1934).
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> (3-A) The interest payable under sub-secton (3) shall be paid to the workman or his dependant, as the case may be, and the penalty shall be credited to the State Government.

. Therefore, a plain reading of the section would make it clear that compensation under section 4 must be paid to the workman by the employer immediately it falls due and penalty can be imposed by the Commissioner if it is not so paid. The Commissioner has erroneously refused to grant penalty because the claim had been filed after a period of one month from the accident. This reasoning is wholly erroneous. Under the Workmen’s Compensation Act, the claim for compensation must be filed within two years of the occurrence of the accident. The delay in filing the application beyond the period of limitation can be condoned by the Commissioner for sufficient reasons. Therefore, the Commissioner having decided to condone the delay, the actual delay being of three months, cannot refuse to award penalty on the ground that the claim was not made within a month of the accident. The entire reasoning of the Commissioner is faulty.

4. Mr.Hegde for the Maharashtra State Road Transport Corporation attempted to justify the order of the Commissioner that no penalty should be awarded, by submitting that penalty can be imposed only when compensation is not paid by the employer when it falls due. According to Mr.Hegde, the compensation is payable only when a claim has been made through a notice issued under section 10 of the Workmen's Compensation Act. If no such notice is issued, then it cannot be said that the compensation has fallen due. He submits that in the facts of the present case, it was difficult to decide whether the petitioner had suffered any disability when admittedly the Petitioner was hospitalised and was under treatment for more than one and a half years. He submits that the injury sustained by the Petitioner on account of the accident was a fracture to his limb which is a non-scheduled injury, and therefore the compensation could not be computed by the State Transport Corporation for being deposited before the Commissioner.

5. The issue as to when compensation falls due, is no longer *res integra*. The Apex Court had occasion to decide the issue in the case of *Pratap Narain Singh Deo v/s. Shrinivas Sabata & Anr.*, **AIR 1976 SC 222**. The Apex Court considered the submission of the employer in

that case that the liability did not arise and, therefore, penalty could not be imposed, until the compensation had been settled by the Commissioner under section 19 of the Act. Negativing this submission of the employer, the Apex Court held thus:

> 7. Section 3 of the Act deals with the employer's liability for compensation. Sub-section (1) of that section provides that the employer shall be liable to pay compensation if "personal injury is caused to a workman by accident arising out of and in the course of his employment." It was not the case of the employer that the right to compensation was taken away under sub-section (5) of Section 3 because of the institution of a suit in a civil court for damages, in respect of the injury, against the employer or any other person. The employer therefore became liable to pay the compensation as soon as the aforesaid personal injury was caused to the workman by the accident which admittedly arose out of and in the course of the employment. It is therefore futile to contend that the compensation did not fall due until after the Commissioner's order dated May 6, 1969 under Section 19. What the section provides is that if any question arises in any proceeding under the Act as to the liability of any person to pay compensation or as to the amount or duration of the compensation it shall in default of agreement, be settled by the Commissioner. There is therefore nothing to justify the argument that the employer's liability to pay compensation under Section 3, in respect of the injury, was suspended until after the settlement contemplated by section 19. The appellant was thus liable to pay compensation as soon as the aforesaid personal injury was caused to the appellant, and there is no justification for the argument to the contrary.
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> 8. It was the duty of the appellant, under Section 4-A (1) of the Act, to pay the compensation at the rate provided by Section 4 as soon as the personal injury was caused to the respondent. He failed to do so. What is worse, he did not even make a provisional payment under sub-section (2) of Section 4 for, as has been

> stated, he went to the extent of taking the false pleas that the respondent was a casual contractor and that the accident occurred solely because of this negligence. Then there is the further fact that he paid no heed to the respondent's personal approach for obtaining the compensation. It will be recalled that the respondent was driven to the necessity of making an application to the Commissioner for settling the claim, and even there the appellant raised a frivolous objection as to the jurisdiction of the Commissioner and prevailed on the respondent to file a memorandum of agreement settling the claim for a sum which was so grossly inadequate that it was rejected by the Commissioner. In these facts and circumstances, we have no doubt that the Commissioner was fully justified in making an order for the payment of interest and the penalty."

6. This view of the Apex Court has been reiterated by it in the case of *Kerala State Electricity Board and anr. v/s. Vatsala K. & anr.,* **AIR 1999 SC 3502** and *Oriental Insurance Co.Ltd. v/s. Khajuni Devi & ors.,* **(2002) 10 SCC 567.** Therefore, the submission made by Mr.Sawant, for the petitioner, that compensation falls due immediately there is an accident must be accepted. There is no dispute that the accident occurred on 18.3.1991. Thus the compensation fell due on that date. The submission of Mr.Hegde that it was not possible to assess what could have been the compensation when the injury was not a scheduled injury cannot be accepted. Although the case before the Supreme Court in *Pratap Narain Singh Deo (supra)* was in respect of a scheduled injury, it cannot be said that different principles would apply for imposition of penalty in case of a scheduled injury and a non-scheduled injury. The

employer would be required to make payment of compensation at least under section 4(2). There is no indication that even that compensation has been paid to the workman concerned.

7. In any event, the submission made by Mr.Hegde that the employer did not have any knowledge of what was the claim of the Petitioner since no notice had been issued to the State Transport Corporation is also without any merit. The claim for compensation can be decided even when no notice has been issued under section 10 of the Act. The claim cannot be defeated merely because no notice has been issued as clearly provided under the Act itself. Assuming that no notice was issued and, therefore, the employer had no knowledge of what would be the compensation payable, the MSRTC certainly was aware of the compensation claimed and payable after the claim was filed before the Commissioner. It could have deposited the amount with the Commissioner to demonstrate its intention to pay compensation. This step was also not taken by the State Transport Corporation. Therefore, the submission that the Corporation was not aware as to what was the injury and what could have been the compensation is without any basis.

8. In my view, therefore, penalty must be awarded.

The MSRTC shall pay to the Petitioner penalty quantified at 50% of the compensation awarded by the Commissioner within 12 weeks. Writ Petition is, therefore, made absolute in terms of prayer clause (a) with costs.

9. Parties to act on an authenticated copy of this order.